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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Western Watersheds Project,) No. CV-10-1096-PHX-SMM
10 Plaintiff,) **ORDER**
11 v.)
12 James Kenna, et al.,)
13 Defendants.)
14 _____)

15
16 Before the Court are Plaintiff Western Watersheds Project's ("Plaintiff") Motion for
17 Summary Judgment (Doc. 18) and Defendants James Kenna and United States Bureau of
18 Land Management's ("Defendants") Cross-Motion for Summary Judgment (Doc. 22). The
19 matters are fully briefed. (Docs. 23, 24, 25). Having considered the parties' memoranda and
20 other submissions, the Court finds the following.

21 **BACKGROUND**

22 Plaintiff brought this action under the National Environmental Policy Act ("NEPA")
23 to challenge the adequacy of a Resource Management Plan ("RMP") and Environmental
24 Impact Statement ("EIS") issued by Defendants. (Doc. 1). Defendants issued the RMP in
25 2010 after performing site evaluations in 2002 and preparing an EIS in 2003. (Doc. 18-1 ¶
26 15). The RMP describes a long-term management plan for about 1.3 million acres of land in
27 southwestern Arizona and parts of California. (Doc. 22-1 ¶¶ 1, 19). The claims in this action
28 involve a 640,000-acre area within that region that has been divided into five livestock

1 grazing allotments leased to private ranchers. (Doc. 1 ¶ 20; Doc. 18-1 ¶ 5). This arid land is
2 home to various wildlife and plant species. (Doc. 1 ¶¶ 21-23). Plaintiff is a non-profit
3 organization with offices in several states, including Arizona, concerned with protecting the
4 natural resources, wildlife habitat, and other ecological values that it contends are harmed
5 by the continued availability of livestock grazing permitted by Defendants' RMP. (Doc. 1
6 ¶ 11).

7 Defendants' RMP authorizes continued livestock grazing on five of the sixteen
8 allotments within the planning area. (Doc. 22-5 at 112). This leaves the remaining eleven
9 allotments unavailable for grazing and reduces the total acreage available for grazing by 48
10 percent, although most of that land had not supported grazing for at least five years. (Doc.
11 22-5 at 112). When compared to the other alternatives, the action selected by Defendants
12 minimized changes to the landscape, with respect to livestock grazing, and limited negative
13 social impacts to the ranchers on those allotments. (Doc. 22-5 at 112).

14 **I. Factual History**

15 **A. The 2003 Environmental Impact Statement**

16 NEPA requires federal agencies to prepare an EIS prior to proposing actions in the
17 RMP that will significantly affect the environment. 42 U.S.C. § 4321 et seq. The purpose of
18 the EIS is to assess the potential environmental consequences of actions being considered by
19 the agency, consider alternatives that might be environmentally preferable, and inform the
20 public that potential consequences have been considered. See 42 U.S.C. § 4332(C)(i),(iii);
21 Kern v. BLM, 284 F.3d 1062, 1066 (9th Cir. 2002). The assessments include "any adverse
22 environmental effects which cannot be avoided" if the proposal is implemented. 42 U.S.C.
23 § 4332(C)(ii). Defendants prepared this EIS "to analyze the effects of the agency's new
24 planning regime on the environment." (Doc. 1 ¶ 3). The EIS analyzes the significant factors
25 affecting the area at issue in this case. (Docs. 24-4, 24-5). A non-exhaustive list of these
26 factors include: Land Health Standards, Special Designations Management, Vegetation
27 Management, Special Status Species Management, Livestock Grazing, and Recreation
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1 Management. (Doc. 22-5 at 4). With regard to the frequency of livestock grazing,
2 Defendants' EIS refers to the Special Ephemeral Rule of 1968, which sets the criteria for
3 ephemeral (seasonal) and perennial (year-long) grazing classification. The criteria include:

- 4 1. Rangelands are within the hot desert biome;
- 5 2. Average annual precipitation is less than eight inches;
- 6 3. Rangelands produce less than 25 pounds per acre of desirable forage
7 grasses;
- 8 4. The vegetative community is composed of less than five-percent desirable
9 forage species;
- 10 5. The rangelands are generally below 3,500 feet in elevation;
- 11 6. Annual production is highly unpredictable and forage availability is of a
12 short duration;
- 13 7. Usable forage production depends on abundant moisture and other favorable
14 climatic conditions; and
- 15 8. Rangelands lack potential to improve existing ecological status and produce
16 a dependable supply of forage through intensive rangeland management
17 practices.

18 (Doc. 22-4 at 137). The Ephemeral Rule criteria is applied "as individual allotments are
19 evaluated for compliance with the Arizona Standards for Rangeland Health and Guidelines
20 for Grazing Administration." (Doc. 22-4 at 137).

21 In completing the EIS, Defendants gathered public feedback regarding the proposed
22 action via the notice and comment procedures set forth by NEPA and the Administrative
23 Procedures Act ("APA"). (Doc. 22-5 at 153-54). The opportunity for feedback began on
24 March 30, 2004 when Defendants published a Notice of Intent in the Federal Register. (Doc.
25 22-5 at 152). Notice of Availability was published on December 15, 2006, which initiated
26 a 90-day public comment period. (Doc. 22-5 at 154). Additionally, Defendants held
27 numerous open houses to inform the public of its proposed action. (Doc. 22-5 at 153).
28 Ultimately, Defendants received more than 400 letters from individuals, agencies, and
government officials providing feedback for the proposed action. (Doc. 22-5 at 152, 165).

B. The 2010 Resource Management Plan

Plaintiff asserts that the primary purpose of the RMP is to “allocate land in the Yuma Resource Area.” (Doc. 18-1 ¶ 2). According to Defendants, the RMP establishes goals for “the management of special designations, fish and wildlife habitat management, wild horse and burro management, recreation management, travel management, the maintenance of wilderness characteristics, and lands and realty.” (Doc. 22-2 at 2). Defendants attempt to reach these goals by evaluating a variety of alternative actions for the land area, then selecting a preferred alternative that balances “current and potential resource uses with the need to protect resources, as well as consideration of the human environment.” (Doc 22-2 at 21).

The discussion of alternatives “is the heart of the [EIS].” 40 C.F.R. § 1502.14. Defendants’ RMP discusses four alternative actions in addition to the implemented action. (Doc. 22-2 at 19). Each alternative focuses on a particular component of the land planning process. (Doc. 22-2 at 18). Alternative A is a “no action alternative” that serves as a baseline to identify the potential environmental consequences of the other alternatives. (Doc. 22-2 at 20). Alternative B “generally placed an emphasis on consumer-driven uses . . . It identified areas most appropriate for these various uses.” (Doc. 22-2 at 20). Alternative C combines natural process and active management techniques to allow “visitation and development within the planning area, while ensuring that resource protection was not compromised.” (Doc. 22-2 at 20). Alternative D emphasized preserving the natural and cultural resources of the area, discontinued livestock grazing, and limited public use of the area. (Doc. 22-2 at 20). Alternative E, the implemented action, attempts to respond to the concerns recognized during the planning process, while providing an “optimal balance between authorized resource use and the protection and long-term sustainability of sensitive resources within the planning area.” (Doc. 22-2 at 20).

The RMP also considers several categories of natural resources, and the ways in which the RMP’s actions impact each one. (Doc. 22-2 at 45-47). The resources considered

1 include: water quality, soil, vegetation, threatened, endangered, and special status species,
 2 wilderness characteristics, and livestock grazing. (Doc. 22-2 at 45-47). With respect to
 3 livestock grazing, the RMP states that “[l]ivestock grazing will be managed through existing
 4 laws, regulations, and policies . . . They include a strategy for ensuring that proper grazing
 5 practices are followed, while preserving habitats for sensitive plant and wildlife species.”
 6 (Doc. 22-2 at 47).

7 **II. Procedural History**

8 On May 19, 2010, Plaintiff brought suit challenging the action implemented by
 9 Defendants’ RMP related to more than 600,000 acres of land within the planning area for
 10 livestock grazing. (Doc. 1 ¶¶ 4, 6). On May 16, 2011, Plaintiff filed a Motion for Summary
 11 Judgment, asserting that Defendants: (1) did not meet their duty under NEPA to consider a
 12 reasonable range of alternative actions; (2) did not take a hard look at the environmental
 13 consequences of their actions because the RMP relied on stale and incomplete data; and (3)
 14 violated NEPA’s public disclosure requirements by misrepresenting the environmental
 15 effects of the implemented action. (Doc. 18). On July 5, 2011, Defendants filed a Cross-
 16 Motion for Summary Judgment contending that Plaintiff has not met its burden of
 17 controverting Defendants’ “specialized findings and analysis” in the RMP and the EIS. (Doc.
 18 22 at 1).

19 **LEGAL STANDARDS**

20 **I. Summary Judgment**

21 A court must grant summary judgment if the pleadings and supporting documents,
 22 viewed in the light most favorable to the nonmoving party, “show[] that there is no genuine
 23 dispute as to any material fact and the movant is entitled to judgment as a matter of law.”
 24 Fed. R. Civ. P. 56(a); see Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986); Jesinger v.
 25 Nev. Fed. Credit Union, 24 F.3d 1127, 1130 (9th Cir. 1994). Substantive law determines
 26 which facts are material. See Anderson v. Liberty Lobby, 477 U.S. 242, 248 (1986); see also
 27 Jesinger, 24 F.3d at 1130. “Only disputes over facts that might affect the outcome of the suit
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1 under the governing law will properly preclude the entry of summary judgment.” Anderson,
 2 477 U.S. at 248. The dispute must also be genuine, that is, the evidence must be “such that
 3 a reasonable jury could return a verdict for the nonmoving party.” Id.; see Jesinger, 24 F.3d
 4 at 1130.

5 A principal purpose of summary judgment is “to isolate and dispose of factually
 6 unsupported claims.” Celotex, 477 U.S. at 323-24. Summary judgment is appropriate against
 7 a party who “fails to make a showing sufficient to establish the existence of an element
 8 essential to that party’s case, and on which that party will bear the burden of proof at trial.”
 9 Id. at 322; see also Citadel Holding Corp. v. Roven, 26 F.3d 960, 964 (9th Cir. 1994). The
 10 moving party need not disprove matters on which the opponent has the burden of proof at
 11 trial. See Celotex, 477 U.S. at 323-24. The party opposing summary judgment need not
 12 produce evidence “in a form that would be admissible at trial in order to avoid summary
 13 judgment.” Id. at 324. However, the non-movant must set out specific facts showing a
 14 genuine dispute for trial. See Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475
 15 U.S. 574, 585-88 (1986); Brinson v. Linda Rose Joint Venture, 53 F.3d 1044, 1049 (9th Cir.
 16 1995).

17 **II. Administrative Procedures Act**

18 Judicial review of federal agency action is provided by the APA, 5 U.S.C. § 706,
 19 which states in pertinent part that a “reviewing court shall . . . hold unlawful and set aside
 20 agency actions, findings and conclusion found to be: (A) arbitrary, capricious, an abuse of
 21 discretion, or otherwise not in accordance with the law . . . (D) without observance of
 22 procedure required by law; (E) unsupported by substantial evidence . . .; or (F) unwarranted
 23 by the facts to the extent that the facts are subject to trial de novo by the reviewing court.”
 24 5 U.S.C. § 706(2).

25 The Court finds agency action is or is not “arbitrary, capricious, an abuse of
 26 discretion, or otherwise not in accordance” with § 706, after considering whether “the
 27 decision was based on a consideration of the relevant factors and whether there has been a
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1 clear error of judgment.” 5 U.S.C. § 706(2); Marsh v. Or. Natural Res. Council, 490 U.S.
 2 360, 378 (1989) (quoting Citizens to Preserve Overton Park, Inc. v. Volpe, 401 U.S. 402, 416
 3 (1971)). The evidence must demonstrate that Defendants reasonably believed there were no
 4 feasible alternatives to its challenged action, or that additional alternatives also involve
 5 problems. See Laguna Greenbelt, Inc. v. U.S. Dep’t of Transp., 42 F.3d 517, 524 (9th Cir.
 6 1994) (citing 40 C.F.R. § 1502.14(a)).

7 Both the APA and NEPA require agencies to take a “hard look” at the consequences
 8 of proposed action prior to making a final decision. Neighbors of Cuddy Mountain v.
 9 Alexander, 303 F.3d 1059, 1070 (9th Cir. 2002). An agency has taken a hard look at the
 10 effect of their actions when it can be shown that the EIS includes a “full and fair discussion
 11 of significant environmental impacts” of a proposed action and when the conclusions of the
 12 EIS are based on informed decision making. Nat’l Parks & Conservation Ass’n v. U.S. Dep’t
 13 of Interior, 606 F.3d 1058, 1072 (9th Cir. 2010) (quoting 40 C.F.R. § 1502.1).

14 DISCUSSION

15 NEPA exists “to insure that an agency, while seeking to fulfill some other substantive
 16 agency goal . . . , considers the impact on the environment.” Ariz. Cattle Growers Ass’n v.
 17 Cartwright, 29 F.Supp.2d 1100, 1109 (D. Ariz. 1998). Under NEPA, federal agencies are
 18 required to “identify and develop methods and procedures” that ensure environmental
 19 considerations are made in conjunction with economic and technical considerations
 20 throughout the decision making process. 42 U.S.C. § 4332(B). NEPA’s requirements apply
 21 to “every recommendation or report on proposals for legislation and other major Federal
 22 actions significantly affecting the quality of the human environment” and are appropriately
 23 applied in this matter. 42 U.S.C. § 4332(C).

24 In order to prevail under a NEPA claim, Plaintiff must show that Defendants acted
 25 arbitrarily when preparing the EIS. Kleppe v. Sierra Club, 427 U.S. 390, 412 (1976); Friends
 26 of the Earth v. Hintz, 800 F.2d 822, 832 (9th Cir. 1986); Ariz. Cattle Growers Ass’n, 29
 27 F.Supp.2d at 1115. NEPA is a procedural regulation and claims against substantive outcomes
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1 are not proper under NEPA. Winter v. NRDC, Inc., 555 U.S. 7, 23 (2008); Robertson v.
2 Methow Valley Citizens Council, 490 U.S. 332, 350 (1989). Thus, Plaintiff's claims are not
3 evaluated based on the outcome of Defendants' action, but rather on the procedures
4 Defendants took prior to implementing the action.

5 Plaintiff asserts in its Motion for Summary Judgment that Defendants acted arbitrarily
6 and capriciously when implementing action under the RMP by: (1) not considering an
7 obvious and reasonable alternative to the implemented grazing plan; (2) relying on
8 incomplete evaluations when preparing the management plan which would prevent the
9 agency from meeting the hard look standard; and (3) violating the public disclosure
10 requirement of NEPA because information regarding the environmental consequences of the
11 proposed action was missing or misrepresented in the EIS. (Doc. 18 at 11-17). Defendants'
12 Cross-Motion for Summary Judgment contends that Plaintiff has failed to meet its burden in
13 challenging the RMP and EIS. (Doc. 22 at 1).

14 **I. Consideration of Reasonable Alternatives to the Implemented Action**

15 Plaintiff asserts that Defendants' actions were arbitrary and capricious under NEPA
16 because the RMP did not evaluate a reasonable range of alternatives, specifically an
17 alternative that considered a reduction in livestock grazing, which is the "one alternative that
18 would actually make a difference in the condition of the landscape, and the one alternative
19 that every allotment evaluation" recommended. (Doc. 18 at 13-14). Plaintiff recognizes that
20 Defendants considered four alternatives to the implemented action. (Doc. 18 at 13).
21 However, Plaintiff asserts that this does not equal a reasonable range because all of the
22 alternatives considered in the EIS ultimately provide the same results on the land and the
23 only "difference between the alternatives is . . . the inclusion or exclusion of allotments."
24 (Doc. 18 at 13).

25 Defendants' Response contends that Plaintiff's claim is "premised on three mistaken
26 assertions" that prevent Plaintiff from meeting its burden. (Doc. 23 at 16). First, Defendants
27 contend that Plaintiff's claim is directly contradicted by the record because Defendants
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1 “specifically considered an alternative to its final RMP that would result in the
2 discontinuation of livestock grazing.” (Doc. 23 at 16). Defendants further dispute Plaintiff’s
3 claim, contending that the alternatives considered in the EIS and RMP advance the goals of
4 the Taylor Grazing Act and the Public Rangelands Improvement Act of 197 which include
5 improving “the condition of public rangeland . . . in accordance with management objectives
6 and the land use planning process.” (Doc. 23 at 20-21). Second, Defendants contend that the
7 agency’s expert evaluations simply made recommendations regarding a reduction in grazing,
8 and did not make a final decision regarding the designated use of these lands. (Doc. 23 at 21).

9 NEPA does not require the Court to evaluate the substantive outcome of agency
10 action. Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 350 (1989). Courts are
11 to evaluate if the agency went through the required procedures to consider alternatives, and
12 should not evaluate the substantive outcome of those alternatives. See id. (“[I]t is well settled
13 that NEPA itself does not impose substantive duties mandating particular results, but simply
14 prescribes the necessary process for preventing uninformed-rather than unwise-agency
15 action.”). When determining the range of reasonable alternatives, courts consider the stated
16 goal and purpose of the project before the agency. Nat’l Parks & Conservation Ass’n v. U.S.
17 Dep’t of Interior, 606 F.3d 1058, 1072 (9th Cir. 2010); City of Carmel-by-the-Sea v. Dep’t
18 of Transp., 123 F.3d 1142, 1155 (9th Cir. 1997); City of Angoon v. Hodel, 803 F.2d
19 1016, 1021 (9th Cir. 1986) (“When the purpose is to accomplish one thing, it makes no sense
20 to consider the alternative ways by which another thing might be achieved.”).

21 The Court finds that Defendants have met their obligation under NEPA to consider
22 a reasonable amount of alternatives in the EIS. First, the purpose of the EIS in question was
23 to “provide direction for future land management actions” and “to analyze the environmental
24 effects resulting from implementing the alternatives.” (Doc. 22-4 at 24). Taking into account
25 the strong presumption in favor of agency deference, this Court is not in a position to
26 evaluate which alternative is most desirable or to determine the number of alternatives that
27 the agency should have considered. See Kleppe, 427 U.S. at 412 (resolving issues of
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1 feasibility of the proposed actions “requires a high level of technical expertise and is properly
2 left to the informed discretion of the responsible federal agencies”); Ariz. Cattle Growers
3 Ass’n, 29 F.Supp.2d at 1119 (finding that agency action was not arbitrary and capricious
4 when it failed to consider an exhaustive list of alternatives but did discuss some feasible
5 alternatives and “the reasons [unselected alternatives] were eliminated.” (quoting Laguna
6 Greenbelt, 42 F.3d at 524)).

7 However, given the purpose of the project, the Court finds that Defendants
8 appropriately considered an adequate number of alternatives. See Nat’l Parks & Conservation
9 Ass’n, 606 F.3d at 1072. The EIS considers four alternative plans of actions, including a “no
10 action” alternative pursuant to 40 C.F.R. § 1502.14, which serves as a benchmark to evaluate
11 the environmental consequences that result under other alternatives. (Doc. 22-2 at 20). The
12 remaining alternatives consider different degrees of recreation, motorized vehicle use, and
13 natural resource preservation. (Doc. 22-2 at 20). The selected action, alternative five, is
14 intended to provide “an optimal balance between authorized resource use and the protection
15 and long-term sustainability of sensitive resources within the planning area.” (Doc. 22-2 at
16 20). The Court finds that Defendants have met their obligation under NEPA to consider a
17 reasonable amount of alternatives because the five potential plans of action discussed in the
18 EIS “provide direction for future land management,” which was Defendants’ goal when
19 preparing the assessment. (Doc. 22-4 at 24).

20 Second, the Court finds that Plaintiff has not shown that Defendants were required to
21 evaluate a variety of livestock grazing plans in the EIS’ alternative discussion beyond
22 Defendants’ guarantee that individual grazing leases will be made in accordance with the
23 range management goals referenced in the RMP. (Doc. 25 at 5). The EIS states in pertinent
24 part that:

25 [l]ivestock grazing would be managed through existing laws, regulations and
26 policies. The plans would incorporate the statewide standards and guidelines
27 . . . They would include a strategy for ensuring that proper grazing practices
28 are followed, while preserving habitats for sensitive plant and wildlife species.

1 (Doc. 22-4 at 51). The Court finds that these considerations comport with Defendants' goal
2 to "provide direction for future land management actions." See Nat'l Parks & Conservation
3 Ass'n, 606 F.3d at 1072 (suggesting that courts consider agency goals and purpose when
4 evaluating if a reasonable range of alternatives were considered). Pursuant to 43 C.F.R. §
5 4130.3 and Defendants' EIS, the Yuma Field Office ("YFO") is the appropriate entity to
6 "specify . . . the period(s) of use, the allotment(s) to be used, and the amount of use . . . for
7 every grazing permit or lease," at the appropriate time. (Doc. 22-4 at 133). Thus, Defendants'
8 decision to renew grazing permits is not appropriately discussed in the RMP because
9 allocation of grazing is done on an individual basis. (Doc. 22-4 at 133 (When the "permittee
10 or lessee applies for grazing use, the YFO determines the amount and period of authorized
11 use."))).

12 Therefore, the Court finds that Plaintiff has failed to meet its burden to demonstrate
13 that Defendants violated NEPA's procedural obligation to consider a reasonable range of
14 alternatives or to demonstrate that the alternative Plaintiff seeks to have implemented is
15 appropriately discussed in the EIS.

16 **II. Taking a "Hard Look" at the Effect of Agency Action**

17 Plaintiff contends that Defendants relied on stale and incomplete data regarding
18 livestock grazing and thus failed to comply with the "hard look" requirement. (Doc. 18 at
19 15). Plaintiff asserts that Defendants' findings in the EIS rely solely on site evaluations
20 conducted in 2002, and therefore the data was stale at the time the EIS was prepared. (Doc.
21 18 at 15-16). Plaintiff further contends that the action in the RMP does not meet the hard
22 look standard because Defendants' own experts' evaluations made recommendations that
23 grazing availability be reduced from perennial to ephemeral grazing. (Doc. 18 at 15-16).

24 Defendants contend that Plaintiff fails to controvert the agency's specialized expertise
25 because the 2002 site evaluations "were only a small part of a comprehensive decision-
26 making" process and the EIS also relied on "its own expertise in analyzing the Arizona
27 Rangeland Standards . . . and additional lease-specific environmental mitigation measures."
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1 (Doc. 23 at 19). Additionally, Defendants contend that Plaintiff misstates the record because
2 follow-up interviews with individual allotment holders were performed in 2006, following
3 the 2002 site evaluations. (Doc. 23 at 19).

4 Under NEPA, the hard look standard involves an evaluation of whether the agency
5 considered all relevant information when forming its decision, and if the agency followed the
6 required procedures. Kleppe, 427 U.S. at 410; Marble Mountain Audubon Soc. v. Rice, 914
7 F.2d 179, 182 (9th Cir. 1990). Although deference to agency decisions that are “fully
8 informed and well-considered” is appropriate, courts “need not forgive a ‘clear error of
9 judgment.’” Blue Mountains Biodiversity Project v. Blackwood, 161 F.3d 1208, 1211,
10 (quoting Save the Yaak Comm. v. Block, 840 F.2d 714, 717 (9th Cir. 1988) and Marsh, 490
11 U.S. at 378). An adequate scope of analysis under NEPA includes consideration of “not only
12 the proposed action, but also . . . connected actions, similar actions, and cumulative actions.”
13 See 40 C.F.R. § 1508.25(a)(1)-(2).

14 The Court finds that Defendants took the requisite hard look at their actions under
15 NEPA because the conclusions in the RMP rely on agency expertise in Arizona Rangeland
16 Standards, vegetation and soil management standards, wildlife and habitat management
17 standards, soil studies prepared by the U.S. Department of Agriculture and Nature
18 Conservancy in 1991, 1994, and 2004, and many other sources. (Doc. 23 at 23). Defendants’
19 experts have collected “an inventory of data and information, which is an ongoing activity
20 and not governed solely by the planning process.” (Doc. 22-4 at 45). Even without agency
21 deference, NEPA does not establish a time frame for agency data collection and therefore,
22 Plaintiff’s claim that Defendants relied on stale data is not relevant to the Court’s analysis
23 of whether the agency took a hard look at the consequences of the implemented actions. See
24 42 U.S.C. § 4321.

25 Plaintiff’s contention that the RMP does not provide complete evaluations of
26 environmental consequences is unavailing as Defendants’ EIS incorporated a sufficient
27 amount of data to justify the hard look requirement. (Doc. 22-5). Regarding the effects of
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1 livestock grazing, Defendants' EIS provides a summary of existing grazing guidelines and
2 compares the acres available for grazing under each alternative in the EIS. (Doc. 22- 4 at
3 132-34). The EIS outlines the criteria for ephemeral grazing and states that "individual
4 allotments are evaluated for compliance with the Arizona Standards for Rangeland Health
5 and Guidelines for Grazing Administration." (Doc. 22-4 at 137). These standards have been
6 approved by the Secretary of the Interior and were "developed to identify the characteristics
7 of healthy ecosystems on public lands and the management actions that promote them."
8 (Doc. 22-4 at 64). Further, Defendants appropriately incorporated the Land Health Standards
9 and Guidelines for Grazing Administration in their analysis in the EIS, which comports with
10 Defendants' experts' recommendation to reduce livestock grazing.

11 Therefore, the Court finds that Plaintiff has failed to demonstrate that Defendants
12 violated NEPA in gathering the information incorporated into the RMP.

13 **III. Compliance With NEPA's Public Disclosure Requirement**

14 Plaintiff contends that Defendants misled the public regarding the environmental
15 effects of livestock grazing because the EIS did not include the agency's expert
16 recommendations to reduce grazing. (Doc. 18 at 17). Further, Plaintiff asserts that "any
17 member of the public who inquired about the source of BLM's contention that no changes
18 should be made in the grazing regime was given palliative misrepresentations about the
19 condition of the land and what the data showed." (Doc. 18 at 17). The EIS states that
20 "Arizona's Standards for Rangeland Health and Guidelines for Grazing Administration
21 (1997) is incorporated into the RMP under all alternatives." (Doc. 22-4 at 28). As stated
22 above, these standards comport with agency recommendations to reduce grazing and the
23 standards are applied during individual lease renewals.

24 One of the purposes of NEPA's requirement for agencies to prepare an EIS is to
25 ensure that the agency has informed the public of the available alternatives that can minimize
26 adverse impacts on the environment. 40 C.F.R. § 1502.1. Defendants held four open houses
27 to hear public concerns regarding the plan and hosted four additional workshops focused
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1 entirely on the alternative development process. (Doc. 22-5 at 152). Ultimately, Defendants
2 received more than 400 letters during the public disclosure period. (Doc. 22-5 at 165). The
3 amount of public feedback regarding the information in the EIS demonstrates that
4 Defendants met their duty to inform the public about the consequences of the proposed
5 action. See Balt. Gas & Elec. Co. v. Natural Res. Defense Council, 462 U.S. 87, 98 (1983)
6 (finding that the agency met NEPA's public disclosure obligation when the "sheer volume
7 of proceedings . . . is impressive" and when the EIS adequately disclosed substantial risks
8 of the proposed action).

9 Therefore, the Court finds that Plaintiff has not produced sufficient evidence to show
10 that Defendants' communications with so many agencies, individuals, and interest groups
11 during the public disclosure process was misleading or constituted a procedural error.

12 CONCLUSION

13 Plaintiff has failed to demonstrate that Defendants did not comply with all procedural
14 requirements under NEPA, even if the substantive outcome of Defendants' action was
15 undesirable to Plaintiff. Further, Plaintiff has not shown that Defendants acted arbitrarily and
16 capriciously when implementing the action described in the RMP.

17 Accordingly,

18 **IT IS HEREBY ORDERED GRANTING** Defendants' Cross-Motion for Summary
19 Judgment (Doc. 22).

20 **IT IS FURTHER ORDERED DENYING** Plaintiff's Motion for Summary Judgment
21 (Doc. 18).

22 DATED this 21st day of November, 2011.

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24 
25 Stephen M. McNamee
26 United States District Judge
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